

MEMORANDUM

TO: CPARB Members
FROM: John Ahlers
DATE: December 2, 2010
RE: CPARB Responsibility/Eligibility Task Force Meeting Oct. 26, 2010 Summary of Meeting

This memorandum summarizes the CPARB Responsibility/Eligibility meeting which took place on Oct. 26, 2010 at the NW Carpenters Facility in Kent, WA.

Attending were: John P. Ahlers, Dan Becker, Mike Purdy, Van Collins, Nora Huey, Paul Szumlanski, Vickie Scantarelli (by phone), Olivia Yang, Terry Tilton

The committee members were advised that the suggested guidelines for bidder responsibility were updated and redlined copies had been made available to all members of the committee.

1. Criterion No. 8 "Completion of Similar Projects:" The first issue discussed was coming to some resolution or consensus as to how to formulate Criterion No. 8 in such a manner that the pool of prospective bidders is not unnecessarily reduced or so broadly crafted that public works owners are not able to ensure that the low bidder is properly qualified to perform the project.

There were two schools of thought regarding bidder responsibility and how the responsibility decision is ultimately utilized in selecting the low responsive and responsible bidder. Unlike bid responsiveness, which must be decided by resort to strict compliance with the bid invitation document, but for immaterial irregularities, the responsibility decision is one that is more subjective and can be exercised after the responsiveness issue has been decided.

Some public works owners view the supplemental responsibility criteria as a "pass/fail" analysis in which no discretion is injected. That is, the prospective bidder must meet the requirements of the supplemental responsibility criteria strictly, otherwise, its bid is rejected.

Other public works owners exercise significant discretion in determining whether the bidder is nevertheless responsible even though the bidder does not strictly meet the supplemental responsibility requirements. Examples were discussed in which the supplemental criteria might ask for three (3) projects of \$2 million or if the bidder had two (2) projects of \$10 million and one (1) project of \$1.7 million, though technically the prospective bidder did not strictly meet the strict requirements of three (3) projects in excess of \$2 million, however, those public works owners exercising discretion may very well find the bidder responsible.

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The Task Force will address some of these issues in its suggested guidelines and, recommend that owners provide prospective bidders some guidance as to how the owners will be interpreting the responsibility criteria, either strictly or with discretion, as set forth above.

It was also discussed that if the low bidder is rejected due to the low bidder allegedly not meeting the responsibility criteria, that in addition to the requirements set forth in RCW 39.04.350(2)(d) that the owner's final determination that the bidder is not responsible be set forth in writing and provided to the bidder. This written basis for rejection of the low bid could provide some check and balance in the system to ensure that owners rejecting a low bid are accountable both to the contracting community and its constituents.

Further, it was brought to the Task Force's attention that some owners are "legislating" the Supplemental Responsibility Criteria. In other words, the general specifications for the public works entity contain Supplemental Responsibility Criteria making Supplemental Responsibility Criteria applicable to each and every project. As originally envisioned, supplemental responsibility criteria would be applicable only to certain projects, not to all projects across the board.

The Task Force decided to remove paragraph 8 of the Guidelines for the 11 generic responsibility criteria and make it a specific stand alone requirement to better emphasize the nature of criterion No. 8.

A suggestion was made that if supplemental responsibility criteria are employed on a project, there should be a minimum amount of time that the project is advertised to allow prospective bidders to avail themselves of the statutory protest opportunities.

2. Training Education Seminar. The Task Force also decided to put on an education seminar in March 2011. The Chair contacted the AGC Education Foundation that has sponsored other CPARB seminars and has reserved March 10, 2011 from 8:00 a.m. to 5:00 p.m. as the time for the responsibility education seminar. Members of the Task Force graciously volunteered to participate, Mike Purdy, Nora Huey, and Paul Szumlanski. The Chair will contact Mr. Absher. The panel of speakers will be further discussed in the next meeting.

3. Safety Criteria. The safety criteria may be too specific to include in the responsibility guidelines. Task Force members Terry Tilton and Van Collins have agreed to take a further look at the safety responsibility criteria and make a recommendation to the Task Force whether inclusion of those criteria is simply too ambitious because of the diverse nature of safety issues or whether an applicable safety guideline can be crafted.

4. Enforcement. The issue of enforcement was brought up in the last Task Force meeting by Miriam Moses. Having some type of enforcement guidelines seems appropriate, however, with

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Ms. Moses absence at the meeting, it was decided to raise this issue again at the next meeting in November or December 2010.

John Ahlers and Mike Purdy will meet and discuss further input and revisions to the guidelines consistent with this meeting.